[Caption Omitted]

COMPLAINT

(Filed July 1, 1966)

I.

This is a suit for violation of a contract between an employer and a labor organization representing employees in an industry affecting commerce within the meaning of Section 301(a) of the Labor Management Relations Act, as amended (29 USC, Section 185(a)). Jurisdiction is based upon that Act, hereinafter called "the Act."

II.

Plaintiff is an individual, d/b/a Totton and Dunn Company, and is engaged in the plumbing business in and around Chattanooga, Tennessee. In his business he purchases, delivers and transports substantial quantities of materials in interstate commerce, and is engaged in an industry affecting commerce within the meaning of Section 2, Subdivision (7) of the Act.

III.

The defendant is an unincorporated association, and is a labor organization within the meaning of Section 2, Subdivision (5) of the Act.

IV.

The plaintiff and defendant are signatories to a contract known as the "Collective Bargaining Agreement between the Master Plumbers, Steamfitters and Piping Contractors and Local No. 43 of the United Association at Chattanooga,

Tennessee," a copy of which is attached to this complaint as Exhibit "A". The original signed copy is in the hands of the defendant.

V.

June 22, 1966, or shortly thereafter, the plaintiff received from the defendant a letter stating that plaintiff's contract was cancelled. A copy of this letter is attached hereto as Exhibit "B".

VI.

The plaintiff has not, and does not intend to, violate any of the terms of the contract (Exhibit "A" hereto); but believes that the defendant has violated and intends to continue violating the contract in that the defendant has refused, despite the wording of paragraph 6 of the contract (Exhibit "A") to furnish employees to the plaintiff upon request. Plaintiff presently needs about fifteen men, but the defendant will not furnish any men to plaintiff and would not even prior to its letter of June 22, 1966; at the same time insisting that the plaintiff cannot, under the terms of the contract, hire men, whether union members or not, who are not furnished by the defendant. The plaintiff, if he is unable to obtain men very soon, will be unable to complete a job he is now working on; and his business and reputation will be irreparably destroyed, and the defendant is aware of this fact.

Wherefore, the plaintiff prays the Court to declare the rights of the parties under the terms of the contract, Exhibit "A" hereto; to require the defendant to furnish employees to the plaintiff as required by the contract; to enjoin the defendant from violating the contract and particularly from picketing the jobs on which the plaintiff is

working, or in any way interfering with the plaintiff in his work; and prays for such other and further relief as to the Court may seem proper under the circumstances.

CHAMBLISS, CHAMBLISS & HODGE

BY .....
Jac Chambliss
1111 Maclellan Building
Chattanooga, Tennessee 37402
Attorneys for Plaintiff

EXHIBIT "A" TO COMPLAINT

COLLECTIVE BARGAINING AGREEMENT BETWEEN THE MASTER PLUMBERS, STEAMFITTERS AND PIPING CONTRACTORS AND LOCAL UNION NO. 43 OF THE UNITED ASSOCIATION AT CHATTANOOGA, TENNESSEE.

* * *

ARTICLE XXI

JOINT CONFERENCE BOARD

Section 1: It is agreed that a Joint Conference Board shall be set up; this Board to consist of eight members: four selected by the Local Union and four selected by the Contractors.

Section 2: The Board shall select a Chairman and a Secretary-Treasurer, one office to be filled by a member of the contractors and one by a member from the Local Union. This Board shall handle all grievances that may arise between the Contractors and the Local Union (except jurisdictional disputes), and any other matter that may affect both organizations. They shall endeavor to improve employer-employee relationship and work together to the best interest of the pipefitting industry as a whole.

Section 3: Either the Union or Management may on its own initiative, submit grievances in writing for determination by the Board as provided for in this Article, and such Board shall meet promptly, but in no case more than seven calendar days following a request for its services to render a final and binding determination. Any decisions on appeals to the Board shall be in writing addressed to all parties interested in the grievance.

Section 4: No grievance shall be heard, considered or given recognition if it is more than ten days since the alleged infraction. Time limits may be waived by mutual agreement, but in no event will the Board be required to go retroactive of any claim of more than thirty days.

Section 5: Minutes shall be kept of all meetings a copy sent to each respective organization. Should at any time this committee disagree over the settlement of a grievance, they shall have the power to refer the matter to a Board of Arbitration. The Arbitration Board shall consist of three members. One member must be agreed upon by both organizations, one selected by the Contractors' Board members and one selected by Local Union Board members. The ruling of this Board shall be accepted as final and binding on both parties. The Arbitration Board shall have full power to establish their rules of procedure. This Board shall meet regularly on ..... day of each month.

Exhibit "B" to Complaint

EXHIBIT "B" TO COMPLAINT

UNITED ASSOCIATION
of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

[redacted]

LOCAL UNION 43 CITY Chattanooga STATE Tenn DATE June 22 19 66

Mr. J. A. Totten,
c/o Totten Plumbing & Heating Co
614 Frawley Road,
Chattanooga, Tenn. 37412

Dear Sir:-

This will advise you that as specified in Section 25 of our current agreement, your contract is cancelled.

Reasons are as follows:

1 - On May 27, 1966, Brother D. W. Killingsworth and I visited the Peavine Bapstist Church at Peavine, Georgia at 2:45 P. M. We found a plumber working on soil pipe who we did not know. In talking to him he said he was helping Brother Jim Dunn. Brother Dunn was not on the job.

On June 22, 1966, Brother Killingsworth visited a job at 3000 Rossville Blvd and found the same man running water pipe. On a second visit the same day, Brother Killingsworth visited the job and found two men working the same job, neither of whom he knew.

On June 22, 1966, I visited the job and at 11:20 found these two men pouring lead on the stack. At 12:40 P. M the same day, I came back by and talked to one of the men and asked him if he had City plumbing license. He stated he did not, he was not doing any plumbing and asked me if I was a City Inspector.

Section 6 of our agreement specifies that The Business Manager of the Union shall furnish, upon request of the employer, all employees to the employers under outlined conditions.

Exhibit "B" to Complaint

UNITED ASSOCIATION
of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada

[redacted]

LOCAL UNION 43, CITY Chattanooga, STATE Tenn, DATE June 22, 19[redacted]

-2-

Therefore, by working people who are not furnished by the Local (whether or not they are Union members) it is my opinion that you have violated your agreement.

Under the agreement you have the right to appeal to the Joint Conference Board (Section 21) within 10 days in writing.

Sincerely

C. Earle Williams
Business Manager
Plumbers & Steamfitters Local #43

[Caption Omitted]

ANSWER

(Filed July 21, 1966)

Now comes Local 43 of United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, and for answer to the complaint says:

FIRST DEFENSE

The complaint fails to state a cause of action upon which relief can be granted.

SECOND DEFENSE

Now answering the specific paragraphs of the complaint this defendant says:

The allegations contained in paragraph I that the parties are engaged in commerce within the meaning of Sec. 30(a) of the Labor Management Relations Act As Amended, are admitted.

It is denied that jurisdiction is conferred upon the Court by virtue of the allegations contained in said complaint.

The allegations of paragraph II regarding commerce within the meaning of the Act are admitted.

It is admitted that the defendant is an unincorporated labor organization within the meaning of the Act.

The allegations of paragraph IV that the parties are signatories to the collective bargaining agreement which is attached to the complaint are admitted.

The allegations that the plaintiff received a letter from the defendant stating that the contract was cancelled is admitted.

The allegations of paragraph VI are denied.

THIRD DEFENSE

The Court lacks jurisdiction of the claim for the reason that the collective bargaining agreement provides for arbitration of all disputes, as appears at Article XXI, page 15 of said Agreement. Plaintiff elected the Joint Conference Board, the arbitration tribunal chosen by the parties, to act upon the matter. A hearing was held on the night of June 30, 1966, and said Joint Conference Board decided against plaintiff and in favor of defendant. The affidavit of H. D. Pickett, containing the minutes of said Joint Conference Board meeting, are hereby adopted and made a part of this Answer. The claim set forth by the plaintiff in this action has been previously adjudicated and determined by the Arbitration Tribunal, and the matters alleged herein are res judicata.

FOURTH DEFENSE

The Court has no jurisdiction to declare the rights of the parties or enjoin defendant, particularly since the facts outlined in the complaint do not constitute a violation of the Labor Management Relations Act, As Amended.

FIFTH DEFENSE

The complaint fails to state a cause of action for the reason that the matters of which complaint is made have been preempted into the National Labor Relations Board which has exclusive jurisdiction of all hiring hall complaints.

WHEREFORE this defendant demands that the complaint against it be dismissed and that this defendant recover its costs herein expended.

KING & FUSTON
Attorneys for Defendant

By .....
723 Chattanooga Bank Bldg.,
Chattanooga, Tennessee 37402

[Certificate of Service Omitted]

[Caption Omitted]

MOTION TO DISMISS COMPLAINT OR FOR SUMMARY JUDGMENT

(Filed July 21, 1966)

The defendant moves the Court as follows:

I

To dismiss the action because the complaint fails to state a claim against defendant upon which relief can be granted.

II

To dismiss the action because the claim set forth by the plaintiff in the action against defendant for the reason

that the same claim as that set forth in plaintiff's complaint herein has been previously adjudicated and determined by the Arbitration Tribunal selected by the parties, as more precisely appears from the affidavits hereto attached.

III

In the alternative defendant moves the Court for summary judgment for defendant under Rule No. 56, Rules of Civil Procedure, on the ground that there is no genuine issue as to any material facts, as more precisely appears from the affidavits attached hereto.

The affidavits of C. Earle Williams, W. D. Killingsworth and H. D. Pickett are attached hereto and made a part of this Motion.

KING & FUSTON
Attorneys for Defendant

By .....
723 Chattanooga Bank Bldg.,
Chattanooga, Tennessee

Exhibit "C"

ASSOCIATED MECHANICAL CONTRACTORS
OF CHATTANOOGA, TENNESSEE, INC.
P. O. Box 387, 902 McCallie Avenue
Chattanooga, Tennessee 37401

July 1, 1966

Mr. James A. Totten
614 Frawley Road
Chattanooga, Tennessee

Dear Mr. Totten:

I have been instructed by the Joint Conference Board to inform you of the decision made on your appeal dated June 20, 1966, in regard to action taken by Local Union #43 in the cancellation of your current labor contract as provided for in Article XXI of the current Agreement.

In view of the evidence presented, the Joint Conference Board concurs in the action taken by the local union in cancelling your contract with Local Union #43, and this correspondence is addressed to you in compliance with Article XXI, Section 3, of the current Agreement.

Very truly yours,

/s/ H. D. Pickett
H. D. Pickett, Secretary
Joint Conference Board

HDP/jl

cc: Mr. C. Earl Williams
Plumbers & Steamfitters Local #43
540 Vine Street
Chattanooga, Tennessee

[Caption Omitted]

OPINION

(Filed December 13, 1966)

This is an action for alleged breach of a collective bargaining agreement. The complaint alleges that the plaintiff, an individual doing business as Totton and Dunn Company, is a party to a collective bargaining agreement with the defendant, Local Union No. 43, an unincorporated labor organization. The complaint alleges that the plaintiff has at all times complied with the collective bargaining agreement, but that nevertheless upon June 22, 1966, the defendant wrongfully notified the plaintiff that the contract was being cancelled as of that date. The plaintiff seeks a mandatory injunction to require the defendant to comply with the complaint and relies upon Section 301(a) [29 U.S.C. 185(a)] of the Labor-Management Relations Act as a basis for the Court having jurisdiction to grant the relief prayed.

The defendant in its answer denies that it wrongfully terminated the collective bargaining agreement and further contends that the issue of termination has been heretofore fully adjudicated by an arbitration decision in favor of the defendant's right to terminate the contract. The defendant further contends that exclusive jurisdiction of this action would lie with the National Labor Relations Board.

The defendant has now filed a motion to dismiss and in the alternate for a summary judgment. Taking up first the motion to dismiss, it appears upon the face of the complaint that the plaintiff has alleged a cause of action within the jurisdiction of this Court. The complaint

contains no allegations with respect to any arbitration of the matters presently in dispute. Accordingly, the motion to dismiss should be denied.

Turning next to the defendant's motion for summary judgment, defendant has filed an affidavit by the Business Agent of Local Union 43 wherein it is stated that the plaintiff made a written request for the Joint Conference Board to decide the issue with regard to the Union's right to terminate the contract at the time that the plaintiff received the notice of cancellation. The affiant further states that the submission to the Joint Conference Board was in accordance with Article XXI of the collective bargaining agreement and that the Joint Conference Board did in fact hold a hearing and thereafter unanimously uphold the action of the Union in terminating the plaintiff's contract. A copy of the minutes of the Joint Conference Board meeting, held June 30, 1966, is filed as an exhibit along with a copy of the notice given the plaintiff by the Secretary of the Joint Conference Board advising the plaintiff that the Board had concurred in the action of the Union in cancelling the plaintiff's contract.

No counter-affidavits have been filed. Accordingly, there appears to be no genuine issue of fact but that the dispute between the plaintiff and defendant over the termination of the contract was submitted to the Joint Conference Board as provided in Article XXI of the contract and that the Joint Conference Board decided the issue in favor of the Union. The plaintiff, by way of response to the defendant's motion, takes the position that under the language of the contract, submission of the dispute to the Joint Conference Board and the decision of that Board did not constitute a binding arbitration but rather amounted only to the exhaustion of administrative remedies prior to resort to Court.

Article XXI provides as follows:

"Section 1: It is agreed that a Joint Conference Board shall be set up; this Board to consist of eight members: four selected by the Local Union and four selected by the Contractors.

Section 2: The Board shall select a Chairman and a Secretary-Treasurer, one office to be filled by a member of the contractors and one by a member from the Local Union. This Board shall handle all grievances that may arise between the Contractors and the Local Union (except jurisdictional disputes), and any other matter that may affect both organizations. They shall endeavor to improve employer-employee relationship and work together to the best interest of the pipefitting industry as a whole.

Section 3: Either the Union or Management may on its own initiative, submit grievances in writing for determination by the Board as provided for in this Article, and such Board shall meet promptly, but in no case more than seven calendar days following a request for its services to render a final and binding determination. Any decisions on appeals to the Board shall be in writing addressed to all parties interested in the grievance.

Section 4: No grievance shall be heard, considered or given recognition if it is more than ten days since the alleged infraction. Time limits may be waived by mutual agreement, but in no event will the Board be required to go retroactive of any claim of more than thirty days.

Section 5: Minutes shall be kept of all meetings a copy sent to each respective organization. Should at any

time this committee disagree over the settlement of a grievance, they shall have the power to refer the matter to a Board of Arbitration. The Arbitration Board shall consist of three members. One member must be agreed upon by both organizations, one selected by the Contractors' Board members and one selected by Local Union Board members. The ruling of this Board shall be accepted as final and binding on both parties. The Arbitration Board shall have full power to establish their rules of procedure. This Board shall meet regularly on ..... day of each month."

It appears unto the Court that the foregoing language of the contract does provide for binding arbitration of all grievances other than jurisdictional disputes. In the case of United Steel Workers of America v. Warrior & Gulf Navigation Co., 363 U.S .574, 4 L.ed.2d 1409, 80 S.Ct. 1347, the Supreme Court held that provisions for compulsory arbitration of disputes arising under collective bargaining agreements are to be liberally construed in favor of such arbitration and that the hostility sometimes shown compulsory arbitration agreements in commercial contracts has no place in the field of labor relations. The Court went on to state:

"In the absence of any express provision excluding a particular grievance from arbitration, we think only the most forceful evidence of a purpose to exclude the claim from arbitration can prevail, particularly where, as here, the exclusion clause is vague and the arbitration clause quite broad."

Moreover, as held in the steel workers trilogy, the Court would not be permitted to weigh the merits of the arbitration decision. United Steelworkers of America

v. American Mfg. Co., 363 U.S. 565, 4 L.ed.2d 1403, 80 S.Ct. 1343; United Steel Workers v. Warrior & Gulf Navigation Co., supra; and United Steel Workers v. Enterprise Corp., 363 U.S. 593, 4 L.ed.2d 1424, 80 S.Ct. 358.

There is no issue of fact in this record but that the very matter here sought to be litigated by the plaintiff, that is, the propriety of the Union's action in terminating the collective bargaining agreement, was submitted by the parties to the Joint Conference Board in accordance with Article XXI of the contract. There is no dispute in the record but that the Joint Conference Board decided the issue in favor of the Union's right to terminate the contract. Under the language of the contract the Court is of the opinion that the decision of the Joint Conference Board would be conclusive upon the issue here sought to be raised by the plaintiff.

The defendant's motion for summary judgment will accordingly be sustained and an order will enter dismissing this suit.

Frank W. Wilson
United States District Judge

[Caption Omitted]

ORDER

(Filed December 13, 1966)

This case is before the Court upon the defendant's motion for summary judgment. For the reasons set forth in an opinion filed this date, the Court is of the opinion that the motion for summary judgment should be sustained and that the plaintiff's action should accordingly be dismissed.

It is accordingly ORDERED that the plaintiff's suit be and hereby is dismissed at the cost of the plaintiff.

APPROVED FOR ENTRY.

FRANK W. WILSON
United States District Judge

[Caption Omitted]

MOTION TO RECONSIDER

(Filed December 22, 1966)

Plaintiff moves the Court to reconsider its Opinion filed December 13, 1966, for the reasons set out in the attached brief.

CHAMBLISS, CHAMBLISS & HODGE

By Jac Chambliss
Attorneys for Plaintiff

[Certificate of Service Omitted]

[Caption Omitted]

ORDER

(Filed January 19, 1967)

This case comes before the Court again upon the motion of plaintiff for the Court to reconsider its prior ruling sustaining defendant's motion for summary judgment and dismissing plaintiff's action.

The Court, having considered the motion and the briefs and arguments of the parties, is of the opinion that its prior ruling is correct and it is accordingly ORDERED that plaintiff's motion be denied.

APPROVED FOR ENTRY.

.....
United States District Judge

No. 17,778

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JAMES A. TOTTON d/b/a TOTTON AND DUNN COMPANY,

Plaintiff-Appellant,

v.

LOCAL 43 OF UNITED ASSOCIATION OF JOURNEYMEN, ETC.,

Defendant-Appellee.

ORDER

FILED
May 9, 1968
CARL W. REUSS, Clerk

Before: WEICK, Chief Judge, McCREE and COMBS, Circuit Judges.

The company has appealed from a judgment of the District Court holding that the language of a collective bargaining agreement provided for binding arbitration of all grievances except jurisdictional disputes. The parties had submitted to a joint conference board the question whether the union had a right to cancel the collective bargaining agreement on the ground that the employer had violated its provisions. The joint conference board found in favor of the union and the District Judge held the company was bound by the decision.

Upon consideration, the judgment of the District Court is affirmed for the reasons stated in the District Judge's memorandum opinion.

Entered by order of the Court

/s/ Carl W. Reuss
Clerk